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Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
Eighth session
New York, 14-25 August 2006

Letter dated 10 August 2006 from the Deputy Permanent Representative of the Sudan to the United Nations addressed to the Secretariat

In my capacity as Chairman of the Arab Group for the month of August 2006, and on behalf of the members of the League of Arab States, I hereby attach a statement of the Arab States' position regarding the controversial articles of the comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities.

We kindly request the distribution of the present letter and its annex to the members of the Ad Hoc Committee as a document of its eighth session.

(*Signed*) Omar Bashir **Manis**
Chairman of the Arab Group
Ambassador, Deputy Permanent Representative of
the Republic of the Sudan to the United Nations

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Annex to the letter dated 10 August 2006 from the Deputy Permanent Representative of the Sudan to the United Nations addressed to the Secretariat

[Original: Arabic]

Social Affairs Sector
Department of Development and Social Policies
Technical Secretariat of Arab Ministers of the Interior

Position of the Arab States with regard to disputed articles and clauses in the draft comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities

The Arab States have held several meetings to discuss the draft comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities on the basis of the report of the Department of Development and Social Policies regarding the seventh session held in New York on 16 January-3 February 2006. The Arab States have agreed to the following wordings for the articles and clauses that are still in brackets in the draft convention:

Substantive matters

I. Title of the convention

"International Convention on the Rights of Persons with Disabilities", on the understanding that the rest of the convention's title will be included in article 1 (Purpose). The Arab Group supports this title because it includes the rights of persons with disabilities and not just the rights of disabled persons, making the title more reflective of the convention's content.

II. Preamble

The last paragraph of the preamble, which states "[Convinced that the family, as the fundamental group of society, should receive support, information, and services to enable it to contribute towards the full and equal enjoyment of the rights of persons with disabilities]," is still between brackets. The Arab Group supports the retention of this paragraph as set out in the draft convention and the removal of the brackets and emphasizes the necessity of retaining the words "the family, as the fundamental group of society".

III. Definitions

The Arab Group proposes that the definition of disability should be comprehensive, thereby making it acceptable to all as a substantive definition. The Arab definition of disability and persons with disabilities, set out in the Standard Guide to Disability and Special Education Terms issued by the League of Arab States and the Executive Office of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council, is more specific and comprehensive than the definitions proposed during the seventh session. The Arab definition also deals

with the social, legal and health dimensions inasmuch as it includes discrimination as one of the principal causes of disability, making it closer to and more expressive of the convention's contents. The proposed definition states:

> "Disability is the cumulative result of the barriers and restrictions that handicaps impose on an individual and prevent him from doing all that he is capable of. The term disability is bound up with attitudes and trends and indicates the difficulties in interacting with the environment that are imposed on a person who suffers from a physical or mental disability in a particular situation. Persons who suffer from various handicaps may become disabled not as a result of the handicap itself but because of the negative, non-constructive trends and the barriers that prevent them from participating in public life or being self-reliant."

The Arab definition is based on the health-related and social concepts of disability and on the fact that disability is actually the result of direct or indirect discrimination against persons with disabilities. The Group proposes the adoption of the Arab definition of persons with disabilities because it is most expressive of the convention's contents and goals.

- In the paragraph on discrimination, the phrase "[and direct and indirect discrimination]" is still between brackets and may be deleted as the text already contains the phrase "all forms of discrimination", which includes direct and indirect discrimination. Consequently, retaining or deleting this phrase will not affect the meaning of the text. For that reason, the Arab Group is not against retaining the words "direct and indirect discrimination" nor does it object to deleting them.

- A subsequent paragraph on national laws of general application is still between brackets. The Arab Group would like to strengthen the text by adding other social dimensions to it so that the text reads [National laws, customs and traditions of general application]. It is not only laws that are relevant to disabilities. Values, customs and traditions are also relevant; restricting the matter to laws alone will not achieve the goal of social integration for persons with disabilities. A text that includes customs and traditions is more suited to the spirit of the convention than a text that includes laws only and excludes other factors.

IV. Operative articles

As far as the paragraphs on women with disabilities and children with disabilities are concerned, the Arab Group supports having articles dedicated to women and children in order to focus on their situations which require special attention. Women's and children's issues are mentioned in the convention's other articles whenever appropriate. There is no dispute about the text on these subjects. The Arab position is flexible vis-à-vis the formal contradictions related to wording of the articles and is based in this regard on the Arab Decade for Disabled Persons, which dedicated special themes to women and children. Consequently, there is nothing to prevent having a separate article for each. The Arab Group agreed that article 7, paragraph 4, on the protection of children should be deleted because it is a repetition of many other articles and clauses in the convention. For example, the protection of children is addressed in article 18, paragraph 2, and in paragraphs 3, 4 and 5 of article 23.

As for article 11 of the draft convention, the Arab Group reiterates the position which it expressed during the proceedings of the seventh session, and maintains its call for the incorporation in the article of the wording it proposed:

> "States parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the safety and protection of persons with disabilities under foreign occupation and that institutions which provide them with care and rehabilitation are not targeted or placed in danger."

The Arab Group would like to point out that there is no justification for saying that there is no basis for singling out foreign occupation in article 11 because it is mentioned in the preamble. Many of the matters addressed in the convention are referred to in the preamble, yet they are more specifically emphasized in the convention's operative paragraphs. Therefore, there is nothing that prohibits specifically defining armed conflict and including foreign occupation in that definition, particularly since armed conflict by itself does not, in any case, mean foreign occupation. The mechanisms for ending armed conflict and the related international laws are also different from the mechanisms on decolonization and the international charters calling for the elimination of its manifestations.

The other issue is that the convention does not address at all the dangers faced by institutions that provide care and rehabilitation for persons with disabilities. Nor does it contain any language that refers to persons with disabilities living under occupation, which lessens its credibility. Thus the convention that is supposed to end discrimination against persons with disabilities actually discriminates against them by excluding persons with disabilities living under occupation from its provisions, which is a contradiction of the letter and spirit of this convention and other international conventions. It does not make sense to issue an international convention that protects persons with disabilities and preserves their dignity while completely ignoring the daily threats persons with disabilities face under occupation as well as the destruction of the institutions that provide them care and rehabilitation.

- Article 12, particularly subparagraphs 2 (a) and (b), refers to the "[legal capacity]" of persons with disabilities on an equal basis with others in all fields. The Arab Group is opposed to this paragraph as a matter of principle because, in practice, legal capacity on an equal basis with others in all fields is a negation of the rights of persons with certain types of disabilities, especially those who are mentally disabled and whose disability does not allow them to enjoy legal capacity, particularly in matters of inheritance or finance. To stipulate legal capacity in an absolute manner will lead to the exploitation of persons with certain types of mental disabilities. Legal capacity also means legal responsibility before a court. Thus in criminal cases persons with certain types of disabilities that lead them unknowingly to commit criminal offences would be subject in practice to the law because they would be considered legally capable and responsible for their actions. This constitutes a blatant negation of the rights of those persons who might commit acts without comprehending the gravity of their liability. The text, therefore, exposes these persons to the danger of being treated as the equals of persons without disabilities who commit the same crime and, consequently, being subject to the same penalty. This is an anomaly in terms of law and custom and cannot be

accepted. The principle that must be adopted is that of the equality of persons with disabilities before the law and not that of their legal capacity.

A distinction must also be made between legal responsibility and the principle of equality. Legal responsibility means responsibility for an action and for its consequences. It is inappropriate to suggest adding a paragraph that stipulates that this should be in accordance with national law. If the general trend is to retain legal capacity, it is vital to define legal capacity as the ability to act and discriminate in order to protect the persons whose disability does not allow them to assume independent legal capacity because of their inability to discriminate.

Accordingly, the Arab Group supports the text found in article 12, paragraph 2 ter,* and which states that legal capacity must be "[proportional and tailored to the person's circumstances]".

- Article 17, paragraph 4, on the protection of the integrity of the person: The Arab Group is flexible as to the proposed wordings and would be amenable to any amendments that are in keeping with the contents of the draft convention.

- Article 23 on respect for the home and family: Paragraph 1 (a) states that "Persons with disabilities have the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood." The Arab Group believes that this paragraph represents great dangers for persons with certain types of disabilities some of whom may be subjected to sexual exploitation and that the article will provide a means of defence for exploiters. It would be appropriate to completely delete subparagraph (a) and to add the phrase "experience parenthood" to subparagraph (b) so that it reads: "The right of all persons with disabilities who are of marriageable age to marry, to found a family and to experience parenthood on the basis of free and full consent of the intending spouses is recognized."

- Article 24: The Arab Group believes that the phrase "[In order to meet adequately]" is inappropriate to the text of the convention and is incompatible with its goal. It would be appropriate to delete this phrase and to remove the brackets from the second phrase as general education systems may not meet the individual needs of persons with disabilities. The essential principle is the inclusion of persons with disabilities in the general education system. However, the general education system may not be appropriate for persons with certain types of disabilities, particularly mental disabilities, and may even destroy their capabilities in some instances. The position of the Arab Group is therefore that the first phrase should be deleted from the paragraph and that the brackets should be removed from the second phrase.

- Article 25: The Arab Group has been sufficiently flexible with regard to this article and supports the text subject to the addition of the phrase "which are not against the national law". This wording is found in chapter VII of the Programme of Action of the International Conference on Population and Development adopted by the International Conference on Population and Development. The addition of this phrase may be a means of resolving the dispute surrounding this text and would also be in keeping with the explanatory footnote on this matter found in the draft convention.

* The Arabic text refers here, incorrectly, to paragraph 2 bis.

- Article 27 on work and employment states: "To ensure that persons with disabilities are able to exercise their labour and trade union rights [on an equal basis with others and in accordance with national laws of general application]." The Arab Group supports the removal of the brackets surrounding this text. It is important to retain the text as it stands because the organization of trade unions is subject to national laws that vary from country to country. The principle at the centre of this article is the right of persons with disabilities to exercise their trade union rights and not the trade unions themselves, and it is important to retain the paragraph without any amendments and remove the brackets.

- Article 28 on adequate standard of living and social [protection]: The Arab Group would like to emphasize that the concept of social protection is more inclusive and comprehensive, whereas social security is part of a set of social protection policies. Social protection includes social security and various safety nets and microcredit schemes as well as social integration programmes and packages and poverty reduction policies. These things all fall under the umbrella of social protection. Social protection is what is customarily referred to in social development literature and used by the United Nations and other organizations in their documents. The Arab Group is therefore in favour of retaining the concept of social protection.

- Article 28, paragraph 2 (c): "[To ensure equal access by persons with disabilities to retirement benefits and programmes]." This text is still completely enclosed in brackets. The Arab Group believes that removing these brackets would be more in keeping with the wording of this article.

- The same applies to article 29 as to article 27. The phrase "[on an equal basis with others in accordance with national laws of general application]" is still between brackets. The Arab States support the removal of the brackets and the retention of the phrase because this will bring the paragraph more into line with the world's various political and economic systems as far as participation in political life is concerned.

- Article 32 on international cooperation: The Arab Group supports the text proposed by China which states: "[States Parties recognize further that while international cooperation plays a supplementary and supportive role, each State Party undertakes to fulfil its obligations under the present Convention.]" The delegations of the Arab States believe that the other text, which states that "[Each State Party undertakes to fulfil its obligations under the present Convention, irrespective of international cooperation]," is inappropriate as well as being a wording that is not found in international conventions. How can international cooperation be disregarded in an international convention when an international convention's role, in principle, is to regulate international cooperation? If this cannot be overcome, the convention could no longer become international. Consequently, international cooperation must be specified as a primary supporting element for the implementation of the convention, particularly since the mechanisms required by this convention are a principal component of international cooperation.

- Article 33 on national implementation and monitoring: The Arab States believe that the convention should be separated from the implementation and monitoring mechanisms, that the independence of national monitoring and follow-up committees should be guaranteed and that these committees should be broadly based so as to ensure the representation of the various parties. This should be specified in the convention through the inclusion of the phrase "independent national mechanism" instead of the phrase "national mechanism" currently found in the draft convention.* The goal is to make the text flexible so as to allow all States to establish this mechanism in accordance with the regulations and laws currently in force in each State. The Arab Group also believes that paragraph 3 of the article should be re-worded because the current text which refers to the participation of civil society in monitoring mechanisms at all levels is too general. A replacement text should be drafted defining more precisely the parties that will participate in this mechanism and the levels at which they will participate. The participation of organizations that represent persons with disabilities must be clearly specified.

The Arab Group also would like to emphasize the necessity of separating the monitoring and follow-up mechanism from the implementation mechanism. The implementation mechanism should be addressed in a separate article of the convention and not be combined with the monitoring mechanism. The Arab Group would like to emphasize that it does not object to the draft text so long as it contains the right of each State to develop the mechanism that suits it. The text should also include the principal monitoring elements, which are follow-up on the implementation of the convention, a direct link between organizations of persons with disabilities and this mechanism, and a link between the national and international mechanisms.

The Arab Group also supports the three paragraphs in the draft convention because they serve the desired purpose; any further additions to them might lead to protracted discussions and pointless differences of view. The Group believes that it is best to be satisfied with what is set out in the draft convention and to improve the wording as explained above.

- As for article 34, the Arab Group believes the monitoring and follow-up mechanisms relating to disabilities should be different from those employed for human rights and other international conventions. The Group supports, in principle, the proposal presented by Costa Rica to establish an international monitoring and follow-up mechanism as a sound basis for discussion and its further development through additions to or deletions from the text. The proposal, overall, is constructive inasmuch as it takes into account the problems related to disabilities and adds a new dimension to this mechanism. Certain paragraphs refer to the relation of the proposed mechanism to existing mechanisms within the United Nations system as well as the cooperation of this mechanism with the United Nations system and other international organizations. It would also be appropriate to take advantage of the chair's proposal and harmonize the two texts in order to create a capable and efficient international monitoring and follow-up mechanism.

* *Translator's note*: The term "national mechanism" does not appear in this article in either the English or the Arabic text. Moreover, the reference to the establishment "at the national level [of] an independent mechanism" in the existing text seems to be consistent with the purpose of the amendment that is being proposed and to make the amendment unnecessary.